

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

RED BARN MOTORS, INC.,	*	
DONALD B. RICHARDSON, AND	*	CIVIL ACTION NO.: 3:13-CV-00778-BAJ-RLB
BARBARA A. RICHARDSON	*	
	*	
VERSUS	*	
	*	
NEXTGEAR CAPITAL, INC.	*	
AS SUCCESSOR-IN-INTEREST TO	*	
DEALER SERVICES CORPORATION,	*	
AND LOUISIANA'S FIRST CHOICE	*	
AUTO AUCTION, L.L.C.	*	

MOTION TO DISMISS PURSUANT TO
RULE 12(B)(6) FOR FAILURE TO STATE A CLAIM

NOW COMES Defendant, NextGear Capital, Inc., as successor-in-interest to Dealer Services Corporation (hereinafter "NextGear"), through undersigned counsel, who moves this Court to dismiss Plaintiff's Barbara Richardson's complaint for failure to state a claim upon which relief can be granted.

Ms. Richardson also lacks standing to bring this suit. She has not suffered an actual injury and fails to even allege one in the complaint. In addition, Ms. Richardson cannot assert a private cause of action on behalf of Red Barn Motors Inc., as the right, if any, belongs to the corporation. As demonstrated more fully in the attached memorandum in support, Ms. Richardson lacks standing to assert these claims and thus should be dismissed accordingly.

Moreover, Red Barn lacks standing to pursue any alleged claims due to its failure to obtain authority to employ counsel from the United States Bankruptcy Court Middle District of Louisiana. Further Red Barn did not specifically and unequivocally reserve the alleged claims against NextGear in its Amended Plan of Reorganization that was confirmed.

WHEREFORE Defendant NextGear respectfully prays that this Motion to Dismiss be granted and Plaintiffs' Barbara Richardson and Red Barn claims be dismissed with prejudice, and for all other relief deemed just and proper.

Respectfully submitted,

ADAMS AND REESE LLP

s/ Robin B. Cheatham

Robin B. Cheatham (LA Bar No. 4004)

Jennifer Barriere (LA Bar No. 34435)

One Shell Square

701 Poydras Street, Suite 4500

New Orleans, LA 70139

Telephone: (504) 581-3234

Facsimile: (504) 566-0201

Attorneys for NextGear Capital, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that I have on this 6th day of February 2014 served a copy of the foregoing Motion to Dismiss on all counsel of record via electronic service by the court's CM\ECF system. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

- **Lisa Brener**
lbrener@brenerlawfirm.com, tkeller@brenerlawfirm.com
- **Robin B. Cheatham**
robin.cheatham@arlaw.com, owensvc@arlaw.com
- **Cassie E Felder**
cfelder@felderllc.com, joshua@felderllc.com, sabreen@felderllc.com, jeremiah@felderllc.com

/s/Robin B. Cheatham

Robin B. Cheatham